

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 007412.00289																	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 09/447,472	Filed November 23, 1999																
		First Named Inventor James B. Armstrong, et al.																	
		Art Unit 2421	Examiner Sumaiya Chowdhury																
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding: 5px; text-align: right;">/Mark E. Wilinski/</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding: 5px; text-align: right;">Signature</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number 63,230</td><td style="vertical-align: top; padding: 5px; text-align: right;">Mark E. Wilinski</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding: 5px; text-align: right;">Typed or printed name</td></tr><tr><td></td><td style="vertical-align: top; padding: 5px; text-align: right;">202-824-3000</td></tr><tr><td></td><td style="vertical-align: top; padding: 5px; text-align: right;">Telephone number</td></tr><tr><td></td><td style="vertical-align: top; padding: 5px; text-align: right;">October 17, 2011</td></tr><tr><td></td><td style="vertical-align: top; padding: 5px; text-align: right;">Date</td></tr></table>				<input type="checkbox"/> applicant/inventor.	/Mark E. Wilinski/	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 63,230	Mark E. Wilinski	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	Typed or printed name		202-824-3000		Telephone number		October 17, 2011		Date
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<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>																			
<table style="width: 100%; border: none;"><tr><td style="width: 50%;"><input checked="" type="checkbox"/> *Total of <u>3</u> forms are submitted.</td><td style="width: 50%;"></td></tr></table>				<input checked="" type="checkbox"/> *Total of <u>3</u> forms are submitted.															
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

James B. Armstrong, et al.

Serial No.: 09/447,472

Filed: November 23, 1999

For: METHOD AND APPPARATUS FOR
HIERARCHICAL DISTRIBUTION OF
VIDEO CONTENT FOR AN
INTERACTIVE INFORMATION
DISTRIBUTION SYSTEM

Atty. Docket No.: 007412.00289

Group Art Unit: 2421

Examiner: Chowdhury, Sumaiya

Confirmation No.: 3863

PRE-APPEAL BRIEF REQUEST FOR REVIEW

U.S. Patent and Trademark Office, Mail Stop *AF*
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit Deposit Account No. 19-0733, accordingly. Any necessary extensions of time are hereby requested.

Remarks

Having received and reviewed the Final Office Action dated July 6, 2011, in view of the Advisory Action dated September 26, 2011, Applicants respectfully submit that the standing rejections are based on one or more clear legal and factual errors, and that the appeal process can be

avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

Rejections Under 35 U.S.C. § 103

Claims 1-4, 6-8, 19, 21-25, and 27-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hokanson (US 5, 999,351) in view of Goldszmidt (US 6,195,680).

Independent claim 1 recites, among other features:

wherein the manager, in response to an infrequently requested video asset becoming frequently requested, is configured to select and transmit the frequently requested video asset to at least one primary partition of each of at least two servers;

wherein the manager, in response to a frequently requested video asset becoming infrequently requested, is configured to select and transmit the infrequently requested video asset to at least one secondary partition of at least one, but less than the all of, the plurality of servers and removing the infrequently requested video assets from the primary partitions.

Regarding the substance of the applied documents, claim 1 recites transmitting infrequently requested content to at least one, **“but less than all,”** of the servers, and the cited Goldszmidt document only shows transmitting the content to all of its servers. Goldszmidt (at col. 4, lines 26-54; col. 5, lines 33-45; col. 7, lines 10-22; col. 8, lines 27-33) “discloses load balancing in order to provide a good balance of server availability. The control server redirects user requests to servers that can provide the multimedia requested. In the event that there is a server failure or content overload, the control server redirects the client to the secondary server which also provides the same multimedia.” Office Action at pages 3-4. To accomplish this, the Goldszmidt system clearly would have the same content on both the failed server and the backup server. There is no mention of any single server in Goldszmidt that would **not** have the content.

Claim 1 is distinguishable from the applied art for at least the foregoing reasons (notwithstanding whether a combination of the applied documents would have been proper).

Independent claims 19 and 25 recite features similar to those described above with respect to claim 1 and are distinguishable from the applied art for at least substantially similar reasons.

Further, Applicants submit that the record regarding the rejection of dependent claim 21 is not clear enough to survive appeal. To illustrate, claim 21 recites “for each infrequently requested video asset that becomes a frequently requested video asset, removing the infrequently requested video asset from the secondary storage partition.” The Office Action at page 7 contends that such features are recited in claim 1 which is rejected under Hokanson in view of Goldszmidt. Claim 1 does **not** recite “for each infrequently requested video asset that becomes a frequently requested video asset, removing the infrequently requested video asset from the secondary storage partition,” as is recited in claim 21. As such, the Office has failed to establish a *prima facie* case of obviousness with respect to claim 21. MPEP 2142 (providing that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, and that if the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness). In the event that the Office maintains a rejection of claim 21 based on Hokanson and/or Goldszmidt, Applicants request the Office to explain how the applied art allegedly describes the above-noted features recited in claim 21 in order to provide a clear record for the appeal.

Furthermore, claim 4, which ultimately depends from claim 1, recites that “the server is a local server” and “the apparatus further compris[es] . . . a content session manager configured to respond to video asset requests forwarded from managers of other servers.” The Office Action at page 5 contends that Hokanson at col. 7, lines 25-42 describes a content session manager that is configured to respond to video asset requests forwarded from managers of other servers. Hokanson at col. 7, lines 25-42 describes a Seattle-based network cite that contains a blend of resources that are tailored to users in the Seattle metropolitan area, and that the Seattle-based network cite accesses a Hollywood-based network cite to obtain a hot new movie released by a Hollywood studio. Even assuming that the Seattle-based network cite providing resources tailored to Seattle users could have been analogized to a local server as recited in claim 4, Hokanson at col. 7, lines 25-42 fails to describe that the Seattle-based network cite is configured to respond to video asset requests forwarded from managers of other servers (e.g., the

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Final Office Action dated July 6, 2011 – Advisory Action dated September 26, 2011

Hollywood-based network cite). Accordingly, claim 4 is distinguishable from the applied art for at least these additional reasons.¹

Applicants submit that the application is in condition for allowance. Applicants reserve the right to include additional argument in an appeal brief.

¹ As an additional point, the rejection of claim 4 refers to a “headend” that is not recited in that claim. For a clear record on appeal, Applicants submit that correction and clarification of the discussion on this point would be helpful.